No. 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

STATE OF NORTH CAROLINA,

Appellant,

v.

HENRY C. ALFORD,

Appellee.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR APPELLEE

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ARGUMENT

THE APPELLEE'S PLEA OF GUILTY WAS NOT A VOLUNTARILY AND INTELLIGENT ACT, AND WAS THEREFORE INVALID.

This Court has long enunciated the principle that a guilty plea not voluntarily and intelligently entered is constitutionally invalid.[1] The record must affirmatively disclose that

[1] *E.g., Machibroda v. United States,* 368 U.S. 487 (1962); *Waley v. Johnston,* 316 U.S. 101 (1942); *Walker v. Johnston,* 312 U.S. 275 (1941); *Kercheval v. United States,* 274 U.S. 220 (1927).

such a plea was both "voluntary" and "intelligent." *Boykin v. Alabama,* 395 U.S. 238 (1969). It is submitted that the record in the present case establishes beyond question that the determination of the appellee, Henry C. Alford, to plead guilty was neither voluntary nor intelligent and that this Court should affirm the decision of the United States Court of Appeals for the Fourth Circuit.

The Court's opinions in *Brady v. United States,* 397 U.S. 742 (1970), and *Parker v. North Carolina,* 397 U.S. 790 (1970), which cases were originally consolidated for hearing with the present case, do not dictate a different decision in the present case from that rendered by the Fourth Circuit. In those cases, the Court held that a guilty plea entered under the statutory scheme establishing the possibility of the death penalty only in situations in which an accused pleads not guilty and demands a jury trial which was invalidated in *United States v. Jackson,* 390 U.S. 570 (1968), is nevertheless valid unless shown not to be the voluntary and intelligent act of the accused. The Court in *Brady* said that the determination of whether a plea is in fact voluntary and intelligent requires a consideration of "all of the relevant circumstances surrounding it." 397 U.S. at 749. Among the circumstances to be considered is the existence of the statutory scheme pronounced unconstitutional in *Jackson.* (As was argued in the appellee's original brief, the statutory scheme under which Alford was charged is substantially the same as that under the Federal Kidnaping Act which was before the Court in *Jackson.*)

The circumstances surrounding Alford's guilty plea were significantly different from those surrounding the pleas of Brady or Parker. The record clearly shows that Alford's will was overborne by the circumstances in which he found himself and that he was "so gripped by fear of the death penalty . . . that he did not and could not, with the help of counsel, rationally weigh the advantages of going to trial against the advantages of pleading guilty." *Brady v. United States,* 397 U.S. at 750.

Alford is a Negro with virtually no formal education. (Record, Vol. 1, Writ of Habeas Corpus filed May 4, 1967; Record, Proceedings of Post Conviction Hearing, Dec. 7, 1964 Term, p. 24.) He was accused of murdering another Negro because of an argument arising over a white woman who was in the company of Alford at the time. Because of these facts—that the accused, a Negro, was in the company of a white woman in a Southern city—Alford was told by his attorney that the circumstances were "aggravated" and that he could be effected by "any prejudiced persons" who might be on the jury.[2] At the post conviction hearing, Alford's attorney denied actually having told Alford that if he did not plead guilty, he would surely get the death penalty, although the attorney did testify that he told

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[2] Q. Now, Mr. Crumpler, did you ever discuss with the defendant or tell the defendant that things would go bad for him because the woman involved was a white woman?

A. No, sir, I don't recall using the word, white. I explained to him that the facts were aggravated and that for that reason —the way the killing occurred, that in my opinion I didn't think the jury would look upon it favorably.

BY THE COURT:

Q. You gave him all of the information that you thought he ought to have in your opinion by representing him?

A. Yes, sir.

Q. If there was anything bad or good about the case, as you learned it, of course, you explained it to him?

A. Your Honor, I might add that in reference to that question that I discussed this matter with him. I explained to him that there were aggravated circumstances and that the jury would render a fair determination and that I had no way to predict their verdict. However, that with the statements given me by the State's witnesses and also the place that it had occurred, which wasn't one of the most commendable places in the county, and concerning if there was any prejudiced persons, that I could not tell who was prejudiced, and that that might affect him, and I brought out every fact that I thought the jury might determine, and I explained to him that I was not prejudiced, I had no feeling about it, and I was as truthful as I could be in representing him. (Record, Proceedings of Post Conviction Hearing, Dec. 7, 1964 Term, pp. 14-15.)

Alford in his opinion he could not win the case and that the facts were aggravated.[3] It is clear that Alford in fact believed that under the circumstances he would receive the death penalty unless he pleaded guilty. At the trial itself, Alford took the stand at his own request and stated that he was innocent and that he "just pleaded guilty because they said if I didn't they would gas me for it, and that is all." (Appellant's Supplemental Brief at 20.) He repeated this assertion several times in response to questioning by his own attorney and by the court. (Appellant's Supplemental Brief at 20-21.) Alford reiterated his position at the post conviction hearing. (Proceedings of Post Conviction Hearing, Dec. 7, 1964 Term, p. 24.) This *Court* in Brady stated:

> "That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. He thus stands as a witness against himself and he is shielded by the Fifth Amendment from being compelled to do so—hence the minimum requirement that his plea be voluntarily expression of his own choice. But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial—a waiver of his right to trial before a jury or a judge. Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and the likely consequences." 379 U.S. at 748 (footnotes omitted).

The record in the present case demonstrates that Alford has never admitted his guilt to the crime with which he was charged, either to the court or to his own attorney. Even at the trial at which the plea was entered, Alford continu-

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[3]See no. 2, supra; Record, Proceedings of Post Conviction Hearing, Dec. 7, 1964 Term p. 6.

ally asserted his innocence and qualified his plea as being submitted "because they said if I didn't they would gas me for it" and because "you all got me to plea guilty." His attorney testified at the post conviction hearing that Alford stated to him that he was not guilty. (Record, Proceedings of Post Conviction Hearing, Dec. 7, 1964 Term, pp. 4, 12.)

A reading of the record reveals that Alford was torn between his desire to plead not guilty and the awesome alternative of risking the death penalty, a penalty he was convinced he would receive if he were tried by a jury.[4] He continually waivered between the two alternatives until finally, after having become convinced from statements of his attorney and of his sister of the inevitability of the death penalty, he consented to plead guilty. (Record, Proceedings of Post Conviction Hearing, Dec. 7, 1964 Term, pp. 7-9, 24-25; Record, Vol. I at 12, Affidavit of Christian Greene.) And even at his trial, he felt compelled not to allow the guilty plea to go unqualified. The record portrays a man so caught up in this dilemma that it was virtually impossible for him voluntarily and intelligently to enter a plea of guilty. Even at the trial, his attorney stated to the court: "I don't know what to do with the man."[5] And yet, in the face of Alford's vacillation and obvious quandary, the court accepted the plea with very little comment or inquiry.

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[4]Under North Carolina, Alford did not have the option to plead not guilty and have a bench trial. *State v. Muse,* 219 N.C. 226, 13 S.E. 2d 229 (1941); *State v. Hill,* 209 N.C. 53, 182 S.E. 716 (1935).

[5]Appellant's Supplemental Brief at 21. At the post conviction hearing, Alford's attorney testified as follows:

Q. Now, at anytime did you make a statement to the Court that you didn't know what to do with the man?

A. I certainly did.

Q. And in that statement, Mr. Crumpler, did you mean at that time that you were not sure what plea you should enter for the man?

A. I meant simply this: that I had advised and consulted with him as far as I thought it best to, and in my opinion as much as I

It is well established that determination of whether a guilty plea is the voluntary and intelligent act of the accused requires a consideration of the state of mind of the defendant at the time the plea was made. This determination is often difficult, perhaps sometimes impossible. However, in the present case, the state of mind of Alford is vividly demonstrated by the record as being so overpowered by the circumstances in which he found himself that it was virtually impossible for him intelligently to enter a voluntary guilty plea. There can be little doubt that Alford's plea was in fact coerced by the existence of the North Carolina statutory scheme of imposing the death penalty under the circumstances of this case.

For the foregoing reasons and for the reasons stated in the appellee's original brief, the judgment of the United States Court of Appeals for the Fourth Circuit should be affirmed and the case remanded for issuance of the writ of habeas corpus.

Respectfully submitted,

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could, that under the circumstances I wasn't sure what the proper course was and I left it up to the Court to make that decision.

Q. And then, Mr. Crumpler, you were in doubt as to what position you were in as to what plea you were to enter if you left it up to the Court?

A. Would you repeat that?

Q. You didn't know what position you were in as to his plea did you?

A. I had no doubt of my position as to what his plea was at that time. I was doubtful of his position and for that reason I left it up to the Court to determine what his plea was. (Record, Proceedings of Post Conviction Hearing, Dec. 7, 1964 Term, pp. 8-9).